

Department of Veterans Affairs

§ 3.314

hold that a service-connected condition accelerated death unless such condition affected a vital organ and was of itself of a progressive or debilitating nature.

[26 FR 1582, Feb. 24, 1961, as amended at 54 FR 34981, Aug. 23, 1989; 54 FR 42803, Oct. 18, 1989]

CROSS REFERENCES: Reasonable doubt. See § 3.102. Service connection for mental unsoundness in suicide. See § 3.302.

§ 3.313 Claims based on service in Vietnam.

(a) *Service in Vietnam.* Service in Vietnam includes service in the waters off-shore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) *Service connection based on service in Vietnam.* Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

(Authority: 38 U.S.C. 501)

[55 FR 43124, Oct. 26, 1990]

§ 3.314 Basic pension determinations.

(a) *Prior to the Mexican border period.* While pensions are granted based on certain service prior to the Mexican border period, the only rating factors in claims therefor are:

(1) Claims based on service of less than 90 days in the Spanish-American War require a rating determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Department of Veterans Affairs regulations.

(Authority: 38 U.S.C. 1512)

(2) Veterans entitled to pension on the basis of service in the Spanish-American War may be entitled to an increased rate of pension if rated as

being in need of regular aid and attendance. Veterans who have elected pension under Pub. L. 86-211 (73 Stat. 432) who are not rated as being in need of regular aid and attendance may be entitled to increased pension based on 100 percent permanent disability together with independent disability of 60 percent or more or by reason of being permanently housebound as provided in § 3.351 (d).

(Authority: 38 U.S.C. 1502 (b), (c), 512)

(b) *Mexican border period and later war periods.* Non-service-connected disability and death pension may be paid based on service in the Mexican border period, World War I, World War II, the Korean conflict and the Vietnam era. Rating determinations in such claims will be required in the following situations:

(1) Claims based on service of less than 90 days may require a determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Department of Veterans Affairs regulations (38 U.S.C. 1521(g)(2)) unless, in the case of death pension, the veteran was, at the time of death, receiving (or entitled to receive) compensation or retirement pay based upon a wartime service-connected disability.

(Authority: 38 U.S.C. 1541(a) and 1542(a))

(2) Determinations of permanent total disability for pension purposes will be based on non-service-connected disability or combined non-service-connected and service-connected disabilities not the result of willful misconduct. However, for pension under Pub. L. 86-211 (73 Stat. 432), permanent and total disability will be presumed where the veteran has attained age 65 or effective January 1, 1977, where the veteran became unemployable after age 65.

(Authority: 38 U.S.C. 1502(a), 1523(a))